

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re)	
)	Case no.: 6:13-bk-08466-CCJ
South Florida Sod, Inc.)	Chapter 11
)	
Debtor.)	
_____)	

**MOTION OF DEBTOR FOR ENTRY OF
AN ORDER AUTHORIZING AND SCHEDULING
(A) A PUBLIC AUCTION FOR THE SALE OF ASSETS,
FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES;
(B) APPROVING PROCEDURES FOR THE SUBMISSION OF BIDS;
(C) SCHEDULING A HEARING TO CONSIDER APPROVAL OF SUCH
SALE; AND (D) APPROVING THE FORM AND MANNER OF NOTICE OF
THE SALE AND BID PROCEDURES PURSUANT TO FED. R. BANKR. P. 2002**

South Florida Sod, Inc., the Debtor-in-possession (the “Debtor”), pursuant to 11 U.S.C. §§105 and 363, submits this *Motion of Debtor for Entry of an Order (A) Authorizing and Scheduling a Public Auction at Which the Debtor will Solicit Bids for the Sale of Its Assets, Free and Clear of Liens, Claims and Encumbrances; (B) Approving Procedures for the Submission of Bids; (C) Scheduling a Hearing to Consider Approval of Such Sale; and (D) Approving the Form and Manner of Notice of the Sale and Bid Procedures Pursuant to Fed. R. Bankr. P. 2002* (the “Motion”). In support of this Motion, the Debtor states as follows:

Chapter 11 Case

1. On July 9, 2013 (the “Petition Date”), the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, in the United States Bankruptcy Court, Middle District of Florida, Orlando Division. The Debtor continues to manage and operate its business as Debtor-in-Possession pursuant to 11 U.S.C. §§ 1107 and 1108 of the Code.

Business of Debtor

2. The Debtor owns multiple parcels of rural real estate in Florida, Georgia, Michigan and Montana. The Debtor uses these parcels in its sod, hay, cattle, timber, stumping and hunting operations.

Preliminary Statement

3. The Debtor requests Court approval of a sale process through which the Debtor can expose its property to a competitive sale process and close the sale expeditiously thereafter. The property consists of 2110 acres on Highway 19, Little Ocmulgee River, Lumber City, Wheeler County, Georgia (the "Property"). A description of the Property is attached as Exhibit "A." The Debtor would like to sell the Property to satisfy two (2) secured claims held by George D. Warthern Bank against the Property and to generate cash with which to fund a plan of reorganization.

Jurisdiction

4. This court has jurisdiction to consider this Sale Procedures Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

The Proposed Sale

5. The Debtor seeks an order pursuant to §§ 105(a) and 363 of the Bankruptcy Code authorizing and approving the Debtor's sale of the Property, free and clear of all liens, claims and encumbrances, with all such liens, claims and encumbrances to attach to the proceeds of the sale.

The Auction

6. The Debtor proposes to conduct the auction of the Property at the Property location on October 19, 2013 at 10:00 a.m. (“Auction”). The Debtor intends to hire Barfield Auctions, Inc. to conduct the auction for the Debtor. A separate application shall be filed to obtain the approval of Barfield Auctions, Inc. In connection therewith, the Debtor requests that the Court approve the following proposed bidding procedures and bid protections.

7. The Debtor proposes the following process for the submission and consideration of bids:

Notice of Auction

8. The Debtor shall provide Notice of the Auction substantially in the form of Exhibit “B” attached hereto to: those persons who were contacted by the Debtor, or who contacted the Debtor, with respect to a potential purchase of all of the Property; all creditors and parties in interest; and the United States Trustee, within two business days of approval of the Order approving this Sale Procedures Motion.

Method of Sale

9. On October 19, 2013 at 10:00 a.m., the Debtor shall conduct the Auction at the Property location in Wheeler County, Georgia.

10. The Auction will be conducted in accordance with the following Method of Sale:

a. In order to derive the best offer and sale of the property, the property will be offered in tracts and as a whole.

b. The tracts will first be offered on high bidder’s choice method on a per acre basis by the total dollar with the first successful bidder having their choice of any tract or multiple of tracts. After the successful bidder makes their choice of tract(s), the auction shall

begin, again selling high bidder's choice of the remaining tracts. This process will be repeated until all tracts have been selected.

c. The second phase of the auction will be the offering of any requested combinations of previous contracts with a 2% raise on the total dollars of the requested combined contracts.

d. The last phase of the auction is to offer the property as a whole by totaling the highest and best bids offered at the auction. A 2% raise is required in order to buy it as a whole. If a raise on the whole is received, then the individual bidders are bought out. This will continue until no more raises can be obtained.

e. Barfield Auctions Inc. shall obtain contracts from the high bidder(s) and collect the 15% earnest money. If the property is purchased as a whole, then the purchaser shall have the option at the signing of the contract to make the offer based off of the number of acres based on our auction plat or have the property surveyed and pay the contract price per acre times the number of surveyed acres.

f. Barfield Auctions Inc. shall then submit the highest and best bids to the Seller for acceptance or rejection.

g. The order of sale on auction day will be as follows:

- i. High bidder's choice of tract on a price per acre basis.
- ii. Combination of tracts.
- iii. The property in its entirety.

h. The successful purchasers will be asked to sign the Seller's Real Estate Purchase Agreement on sale day and make an earnest money deposit equal to fifteen (15%) of the contract price.

i. Sale will close within thirty (30) days after the date of Court Approval at which time the purchaser will pay the balance of the purchase price.

j. The purchaser will pay real estate transfer taxes and all other closing costs.

k. All properties will be sold subject to Seller's confirmation and Court Approval.

l. If any survey work is needed the subject tract must be surveyed prior to closing by a licensed Georgia registered Surveyor. The Purchaser will pay the cost of the survey. Barfield Auctions, Inc. will have the final approval of the selected Surveyor.

m. The Deposit shall be applied by the Debtor against the purchase price to be paid by the Prevailing Bidder at the closing of the transaction approved by the Court; and in the event the Prevailing Bidder does not close said transaction by reason of its breach of the terms of its agreement with the Debtor, the Deposit shall be retained by the Debtor.

n. All bidders shall be deemed to have consented to the core jurisdiction of the Court and to have waived any right to a jury trial in connection with any disputes relating to the Auction and/or the sale of the assets. All bidders shall be bound by their bids until such time as the Court has entered an order approving the sale to the Prevailing Bidder; provided, however, the Prevailing Bidder will be bound by their bids until 5:00 p.m. (Eastern Time) on the day subsequent to the scheduled sale date to the Prevailing Bidder. If, for any reason, a Prevailing Bidder is unable to consummate a transaction within thirty business days of Court approval, the Prevailing Bidder's Deposit shall be paid to the Debtor. If for any reason the Seller cannot close, the deposit will be returned to the Prevailing Bidder.

Notice of the Bid Procedures and the Proposed Sale

11. In accordance with Fed. R. Bankr. P. 2002, the Debtor proposes to give Notice of the Auction and Notice of Hearing on the Sale Motion, and the court-approved Bidding Procedures by United States first class mail as soon as practicable after the date of the Order approving this Sale Procedures Motion to: (a) the office of the United States Trustee; (b) all parties having filed requests for notices in the Debtor's Chapter 11 case; (c) the Internal Revenue Service; (d) all secured and unsecured creditors; and (e) those parties identified by the Debtor as potential purchasers of the Property. The Debtor submits that such notice constitutes good and sufficient notice of the competitive bid procedures, the Sale Motion, and all proceedings to be held thereon and that no other or further notice need be given.

Notice of This Motion

12. The Debtor intends to provide notice of this Motion via: (a) e-mail to all "filing users" through the CM/ECF filing system, including the Office of the United States Trustee; and (b) first class United States mail, postage prepaid, to all creditors and interested parties. The Debtor submits that such notice constitutes good and sufficient notice of this Motion and that no other or further notice need be given.

13. No previous request for the relief sought herein has been made to this or any other Court.

THEREFORE, the Debtor respectfully requests that the Court enter an Order granting the relief requested herein and for such other and further relief as this Court deems just and proper.

/s/ Frank M. Wolff
Frank M. Wolff
Florida Bar No. 319521
Roman V. Hammes
Florida Bar No. 087250
Wolff, Hill, McFarlin & Herron, P.A.
1851 W. Colonial Drive
Orlando, FL 32804
Telephone (407) 648-0058
Facsimile (407) 648-0681
fwolff@whmh.com
rhammes@whmh.com

Attorneys for Debtor

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion was served on August 15, 2013: (i) to all “filing users” by filing with CM/ECF; and (ii) by first class United States mail, postage prepaid, to: (a) Barfield Auctions, Inc., Attn: Cole Barfield, P.O. Box 370, Shellman, GA 39886; (b) Gerald L. Blanchard, Esquire, Bryan Cave, LLP, Attorneys for George D. Warthern Bank, 1201 West Peachtree Street, SW, Atlanta, GA 30309-3488; and (c) all creditors and interested parties as listed on the mailing matrix attached to the original of this document filed with the court.

/s/ Frank M. Wolff
Frank M. Wolff